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Letter dated 16 March 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia addressed to the President of the Security Council

On behalf of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia, and in accordance with paragraph 8 (f) of resolution 1579 (2004), I have the honour to submit herewith the preliminary report to the Council on progress towards meeting the conditions for lifting the measures on diamonds imposed in paragraph 6 of resolution 1521 (2003) (see annex).

In this connection, I would appreciate it if the present letter, together with its annex, were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Ellen Margrethe **Løj**
Chairman
Security Council Committee established pursuant
to resolution 1521 (2003) concerning Liberia

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Annex

Letter dated 7 March 2005 from the Panel of Experts on Liberia addressed to the Chairman of the Security Council Committee established pursuant to resolution 1521 (2003) concerning Liberia

We have the honour to enclose herewith the interim report of the Panel of Experts, prepared in accordance with paragraph 8 (f) of Security Council resolution 1579 (2004).

Panel of Experts on Liberia

(*Signed*) Arthur **Blundell**

(*Signed*) Damien **Callamand**

(*Signed*) Caspar **Fithen**

(*Signed*) Tommy **Garnett**

(*Signed*) Rajiva Bhushan **Sinha**

Report of the Panel of Experts established pursuant to paragraph 8 (f) of Security Council resolution 1579 (2004) concerning Liberia

Introduction

1. Pursuant to Security Council resolution 1579 (2004) of 21 December 2004, the Secretary-General, on 17 January 2005 (S/2005/35), appointed a Panel of Experts on Liberia to undertake the tasks set out in paragraph 8 of resolution 1579 (2004), which are summarized as follows: (a) to conduct a follow-up assessment mission to Liberia and neighbouring States in order to investigate and compile a report on the implementation and any violations of the sanctions concerning arms, travel, timber and diamonds referred to in resolution 1521 (2003), including any information relevant to the designation by the Committee of the individuals described in paragraph 4 (a) of that resolution and paragraph 1 of resolution 1532 (2004), and including the various sources of financing, such as from natural resources, for the illicit trade of arms; (b) to assess the impact and effectiveness of the assets freeze imposed by paragraph 1 of resolution 1532 (2004); (c) to assess the progress made towards meeting the conditions for the lifting of sanctions, as set out in resolution 1521 (2003); (d) to assess the humanitarian and socio-economic impact of the measures imposed by paragraphs 2, 4, 6 and 10 of resolution 1521 (2003); (e) to report to the Council through the Committee by 7 June 2005 on all relevant issues; and (f) to provide a preliminary report to the Council through the Committee by 21 March 2005 on progress achieved towards meeting the conditions for lifting the measures on diamonds imposed by paragraph 6 of resolution 1521 (2003).

2. The Security Council, in its resolution 1579 (2004), renewed its existing sanctions on the import of weapons, the travel of certain individuals and the export of timber products for a further period of 12 months from the date of the adoption of the resolution. However, the Council decided, in paragraph 1 (c) of the resolution, that it would renew the prohibition on the importation of rough diamonds from Liberia imposed by paragraph 6 of resolution 1521 (2003) for a lesser period of six months and that it would review the diamond sanctions after three months in the light of a Kimberley Process visit to Liberia and the preliminary report of the Panel of Experts, with a view to lifting the measures as soon as the Council has concluded that the National Transitional Government of Liberia has established an effective certificate of origin regime for trade in rough diamonds that is transparent and internationally verifiable.

3. After preliminary work conducted in New York and elsewhere, the Panel travelled to Liberia in early February 2005. The present report contains the interim assessment on diamonds called for in paragraph 8 (f) of resolution 1579 (2004). Pursuant to paragraph 8 (e) of the same resolution, the Panel will present a final assessment of all sanctions, including the arms, timber, travel and assets freeze, as well as their socio-economic and humanitarian impact, by 7 June 2005.

4. During its visit to Liberia in February, the Panel worked closely with the Kimberley Process expert mission, which was visiting Liberia in order to: (a) assess the establishment of a transparent, effective and verifiable system to implement the Kimberley Process Certification Scheme, with a particular focus on the adoption of the relevant laws, regulations and procedures in accordance with the Certification

Scheme document; (b) review the proposed system so as to report on the volume of rough diamond production and exports from Liberia, with a view to ensuring transparency and effective implementation of the Certification Scheme; and (c) assess the adequacy of the measures in place to ensure that Liberia will no longer be able to serve as a transit point for illicit diamonds originating from neighbouring States.

General synopsis

5. The Panel of Experts continues to enjoy a positive relationship with the Liberian Ministry of Lands, Mines and Energy, and commends the Ministry for its cooperation during recent assessments and investigations. The Panel is concerned, however, by some recent developments that may be detrimental to the progress made by the National Transitional Government of Liberia towards satisfying the requirements of the Security Council necessary for the lifting of the current embargo on the export of Liberian rough diamonds.

Current situation and progress of the National Transitional Government of Liberia towards compliance

6. The Panel arrived in Monrovia on 9 February 2005 in preparation for the arrival of the Kimberley Process expert mission on 14 February. The Panel was briefed by the Ministry of Lands, Mines and Energy on progress made recently towards meeting the requirements of the Security Council and the Kimberley Process for the lifting of the embargo on the export of diamonds. Since the last visit of the Panel to Liberia, in November 2004, the Ministry of Lands, Mines and Energy has continued its training of outstation personnel for the Bureau of Mines. In particular, workshops have been conducted for the comprehensive instruction of regional coordinators (who will supervise mining agents, inspect operations and conduct preliminary investigations into alluvial matters), 65 mining agents (who will enforce mining laws and regulations) and 46 mineral inspectors (who will ensure that mining laws and regulations are adhered to in the field in compliance with the requirements of the 8 September 2004 Act amending the new Minerals and Mining Law, part 1, title 23, by adding thereto a new chapter 40 providing for controls on export, import and transit of rough diamonds and the broader Kimberley Process). However, while the Panel commends the efforts of the Ministry of Lands, Mines and Energy in respect of those training initiatives, it remains concerned by the lack of funding required to place those personnel on the payroll and successfully deploy them to the field.

7. In an attempt to combat the illegal export of diamonds from legally operating licensed mines, the Ministry of Lands, Mines and Energy, as from 14 January 2005, has suspended the issuance of all licences and permits for diamond mining. As all permits and licences expire annually on 31 December, the Ministry of Lands, Mines and Energy has essentially outlawed all diamond mining activity. In addition, the Ministry of Lands, Mines and Energy has placed a moratorium on alluvial diamond prospecting (although this does not exclude exploration at the industrial level). Nevertheless, while the Panel again commends the Ministry for this forthright initiative directed at those attempting to violate Security Council sanctions, its

legality under the terms of the Liberian Constitution has been called into question by legal representatives of those seeking to continue the mining of diamonds. Furthermore, the Ministry lacks the institutional capacity and authority to enforce this policy in remote mining areas.

8. The National Transitional Government of Liberia has also broadened its collaboration and cooperation with a number of multilateral and bilateral organizations, notably the United Nations Development Programme, which has expressed an interest in offering training assistance in connection with alluvial mining cooperative structures, which have been outlined in previous Panel reports, and the Government of the United States of America, which is aggressively pursuing authorization for a project in Liberia designed to improve implementation of the Kimberley Process through capacity-building. The United States Geological Survey has been invited by the Government of Liberia to undertake a geological survey in response to a suggestion from the Kimberley Process that a production estimate should be developed as soon as possible; however, funding for such a project has not yet been identified.

9. The Ministry of Lands, Mines and Energy has completed the first phase of its extension, which will house the assaying and computer equipment necessary for the Kimberley Process Certification Scheme. However, the building still requires extensive fitting out before it can in any way be regarded as a functioning facility. The funding required to finish the structure is still lacking.

Current patterns of mining activity

10. With the assistance of the United Nations Mission in Liberia (UNMIL), the Panel was able to conduct preliminary aerial surveys of established mining areas in Nimba County and in the Upper Lofa River region. Although the mining moratorium is presently in force, the Panel believes that illegal domestic diamond production currently stands at about $350,000 per month, a negligible amount when compared to Sierra Leone or Guinea. Much of this production is occurring in parts of Western Liberia, where there is no permanent deployment of security personnel, either UNMIL or Liberian.

Nimba County

11. Since August 2004, the Panel has monitored a sizeable class B diamond mine in close proximity to Gbapa, Nimba County (see S/2004/752). The mine, operated by a local businessman through his company, Jungle Waters, employed about 150 diggers and made use of a D-6 Caterpillar tractor as well as a number of large-bore water pumps. The mine was supported by a fairly basic sluice box washing plant, which produced about 15 to 20 carats, worth about $3,500, every two to three weeks. It was reported to the Panel by UNMIL civilian police that in November 2004 the mine suffered a major structural collapse, in which four diggers were killed and several others were seriously injured. Consequently, and as a result of acute pressure placed on the owner by the Ministry of Lands, Mines and Energy, the site was closed in November. An overflight by the Panel confirmed its closure along with that of a secondary mine located 8 kilometres to the south close to the town of

Bahn (ibid.). The Panel interviewed the owner of Jungle Waters on 16 February 2005 and was satisfied that he was no longer mining diamonds anywhere in Liberia.

Lofa River

12. On 15 February the Panel flew along the entire course of the Lofa River from Voinjama in the north-western part of the country to its Atlantic confluence. Mining activity continues on a fairly ad hoc basis between Wiesua and the Lofa Bridge. Mining activity in this region has not increased significantly since the Panel's last aerial reconnaissance of the region in November 2004; broadly, the situation remains the same. There was scattered, small-scale alluvial mining along the outwash plain of the Upper Lofa. Three or four more sizeable class B operations were also recorded in areas directly adjacent to the river in the same region. It should be noted that the canopy in much of this area is often very dense and the Panel has received reports that some illegal mining is now taking place deeper into the forest in an attempt to avoid helicopter surveillance. The Ministry of Lands, Mines and Energy lacks the resources necessary to monitor mining activity in this remote area of the country. Furthermore, there is no UNMIL deployment north of the Bomi Hills between the Lofa and Moro Rivers. This is an important area for diamond production.

American Mining Associates

13. After meeting in Monrovia with Gene Byrge, the president of American Mining Associates (AMA) and a United States national, the Panel, along with the Kimberley Process expert mission, visited the company's operational site located in the remote Kumgbor forest region of Lofa County (latitude 07° 38.170' north, longitude 10° 34.294' west), close to the Moro River and Liberia's border with Sierra Leone. There is no permanent UNMIL deployment in the region.

14. AMA has greatly improved a 35-kilometre stretch of road up to its site, which is sufficiently wide to allow a two-way flow of traffic. The Panel was informed by representatives of AMA that the company employed about 75 people and utilized four road graders, two 30-ton load trucks, two Caterpillar earth movers and a fully mechanized washing plant, as well as other items of mining equipment.

15. The Panel, along with members of the Kimberley Process expert mission and representatives of the Ministry of Lands, Mines and Energy, witnessed significant activity at the AMA site. AMA representatives there, and again in Monrovia, argued that the activity was strictly limited to exploration, for which the company held a licence. It was claimed that the site was producing no more than two stones per month and that excess washed gravel was being stored in sealed 50-gallon oil drums until such time as the Ministry's mining moratorium was lifted. The Panel, along with Kimberley Process geologists, believes that the scale of the operation was excessive for exploration activity typically associated with a small to medium-sized international mining operation. Moreover, it further transpired that the company had not filed an exploration plan with the Ministry as required under the terms of its licence requirements. Consequently, the Ministry, on 17 February 2005, ordered AMA to cease operating immediately and to provide a formal explanation of its activities.

Diamond trading

16. The Panel interviewed representatives of the five or six licensed diamond dealerships in Monrovia. All appear to have suspended operations in line with the current moratorium on diamond mining, although some remained actively engaged in the gold trade. Technically, diamonds in circulation prior to the mining moratorium can still be legally handled by the Monrovia dealers as long as there is no intent to export illegally. Nevertheless, there is evidence to suggest that foreign buyers are operating ad hoc buying offices from hotels and guest houses. They are buying illegal Liberian production and smuggling it to neighbouring States where goods may be passed off as the domestic production of those countries and obtain Kimberley Process certificates, thus legitimizing the diamonds for trade in the international market. While this kind of illegal activity is notoriously difficult to prevent, the Ministry, on 14 November 2004, issued a circular to proprietors of hotels requesting information on illegal activity. So far no arrests have been made and it can be assumed that such illegal trade in violation of the United Nations embargo persists.

West Africa Mining Corporation

17. The Panel is concerned by reports from a number of sources that the National Transitional Government of Liberia has signed a secret agreement with the West Africa Mining Corporation (WAMCO), a company financed by the privately owned London International Bank Limited. The Panel has obtained an unsigned copy of the "mining cooperatives support/mineral purchase agreement between the Republic of Liberia and West Africa Mining Corporation Limited".

18. The terms of the contract give WAMCO the exclusive right to purchase all minerals recovered by mining cooperatives that it will establish and support within all of western Liberia, except those subject to established mineral development agreements. This purchasing licence is valid for 10 years. In addition, it establishes a dealership licence that is also valid for 10 years and gives purchase rights in other areas not subject to the exclusive mineral trading contracts. WAMCO is given the option to initiate contractual extensions. Such an arrangement would create a de facto monopoly over much of Liberia's diamond-producing regions and would preclude market competition for the purchase of diamonds by dealers from alluvial artisanal miners. It is doubtful whether diggers in those conditions would receive a fair price for their goods.

19. WAMCO is required to spend $1 million each year on purchases and supplies for the establishment of cooperative and mining operations. (This investment is by the company and is called a "minimum expenditure". It does not go to the Liberian Government.)

20. There is a single payment to the National Transitional Government of Liberia of $1 million to be paid within 30 days of the signing of the agreement. It is to be paid into a special cooperative development account and is to be administered jointly with the Ministry of Lands, Mines and Energy for the establishment of mining cooperatives.

21. There is also a provision on security that allows WAMCO to create its own private guard service. Past experience with logging companies has shown that such organizations can quickly become militias (S/2004/396 and Corr.1 and 2, para. 115).

22. Specific monetary benefits to be paid to the Government are in the form of income tax, royalties and importation duties, as follows:

- *Income tax*. Income tax is limited to 30 per cent for the first 10 years and 35 per cent thereafter and is based on gross income minus expenses of operations, depreciation, capital losses, interest paid, other taxes, bad debts, exchange losses and prior-year losses
- *Royalties*. Three per cent is due on the gross revenue base for diamonds when Kimberley Process certificates are issued and up to five per cent is due on gross revenue from other minerals
- *Importation duties*. The full import duty and taxes are to be paid on imported gasoline, but only 10 per cent of import duty and excise tax is owed on non-fuel products and oils

23. There is a provision that gives the Government of Liberia 10 per cent equity interest in the operations of WAMCO when the Government exercises the option. WAMCO must also offer the Government or Liberian citizens 10 per cent of its stock at fair market value within 60 days of the effective date of the contract.

24. The conditions under which this agreement was negotiated remain extremely opaque. There was no formal or open bidding process and no consultations with the Liberian Monopolies and Contracts Commission. The Panel interviewed representatives of WAMCO in Monrovia. It transpired from that meeting that the company had had no previous experience in the mining sector whatsoever.

Kimberley Process expert mission

25. The Kimberley Process expert mission conducted a thorough assessment from 14 to 18 February 2005 of steps taken by the National Transitional Government of Liberia to apply for participation in the Kimberley Process Certification Scheme. The Panel is aware that a senior representative of the Kimberley Process will address the United Nations sanctions committee on 9 March 2005 and present its findings with regard to the situation in Liberia. Having consulted with the Kimberley Process expert mission, the Panel is aware that the Kimberley Process believes that Liberia is still some way from a successful application to participate in its certification scheme. In particular, the expert mission formed the opinion that Liberia still lacked functional internal controls and monitoring systems. Moreover, it believed that an absence of UNMIL peacekeepers, as well as of State security and government administration in the western diamond-producing regions, is contributing to illegal mining activities in Liberia. The Panel broadly shares this view.

Conclusions

26. Slow funding and technical assistance continue to hamper efforts by the National Transitional Government of Liberia to meet the requirements of the Security Council.

27. Poor security in diamond-producing regions is contributing to illegal mining and smuggling activity in Liberia.

28. Recent evidence suggests that the National Transitional Government of Liberia is forging an exclusive mineral purchase and cooperative development agreement with an international company of unknown provenance and with no mining sector experience in an atmosphere of secrecy. The people of Liberia are not likely to benefit from such an arrangement in the long term.

29. Liberia is not yet in a position to make a successful application for participation in the Kimberley Process.